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DEC 27 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY STEWART,

Plaintiff - Appellant,

v.

MARTIN SILVA, individually and in his
official capacity,

Defendant - Appellee.

No. 04-55621

D.C. No. CV-02-00177-SGL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Stephen G. Larson, Magistrate, Presiding

Argued & Submitted December 7, 2005
Pasadena, California

Before: REINHARDT and RAWLINSON, Circuit Judges, and FOGEL^{**}, District
Judge.

^{*} This disposition is not appropriate for publication and may not be cited
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The Honorable Jeremy D. Fogel, United States District Judge for the
Northern District of California, sitting by designation.

Mary Stewart appeals the district court's order granting summary judgment. Unfortunately, § 1983 does not provide a remedy for Ms. Stewart's claimed injuries. As her counsel acknowledged at oral argument, her claim is dependent on the search warrant's being unlawful. Under the applicable law, it was not. Although for purposes of summary judgment Stewart has made an adequate showing that Silva "deliberately or recklessly made false statements [and] omissions" in his affidavit, the misstatements and omissions were not "material to the finding of probable cause." *KRL v. Moore*, 384 F.3d 1105, 1117 (9th Cir. 2004) (citing *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1126 (9th Cir. 2002)). Stewart's redacted version of the affidavit states that she possessed material at her residence relating to the murder of her daughter. The presence of evidence of a crime at a location establishes probable cause for a search warrant to be issued, even though the resident is not a suspect and even though the material could be obtained without a warrant. *See United States v. Chavez-Miranda*, 306 F.3d 973, 978 (9th Cir. 2002); *United States v. Collins*, 61 F.3d 1379, 1384 (9th Cir. 1995); *see also Zurcher v. Stanford Daily*, 436 U.S. 547, 553-60 (1978) (holding that the owner of the residence to be searched need not be a suspect). Thus, under the law that binds us, there was probable cause for issuance of the warrant. Because the issuance of the search warrant did not violate the Fourth

Amendment, we are compelled to affirm the judgment regardless of any wrongs committed by Silva.

AFFIRMED.